A

HONG LEONG BANK BHD

v.

SHEIKH AHMAD MARZUKI SHEIKH YUSOF

B

COURT OF APPEAL, PUTRAJAYA
MOHAMAD ARIFF YUSOF JCA
MAH WENG KWAI JCA
UMI KALTHUM ABDUL MAJID JCA
[CIVIL APPEAL NO: T-03(IM)-180-10-2013]

C

13 OCTOBER 2014

BANKING: *Banks and banking business - Default in repayment of loan - Claim for recovery of loan from guarantor - Bank obtained receiving and adjudication order - Application to annul and rescind order - Whether*

D *prevented by principle of res judicata - Decision of Director General of Insolvency (DGI) to admit proof of debt - Whether a bankrupt has locus standi to apply to court to set aside, reverse or vary decision of DGI - Whether recovery of debt time barred - Bankruptcy Act 1967, s. 105(1) - Bankruptcy Rules 1969, r. 186 - Limitation Act 1953, s. 26(2)*

E

BANKRUPTCY: *Receiving and adjudication order - Appeal against - Application to annul and rescind order - Whether prevented by principle of res judicata - Respondent had previously filed application to rescind - Whether relitigation of issues allowed - Whether respondent should be*

F *estopped - Failure to show loan repaid in full to justify annulment of order - Requirements under s. 105(1) Bankruptcy Act 1967 - Whether fulfilled*

BANKRUPTCY: *Proof and priority of debts - Proof of debt - Decision of Director General of Insolvency (DGI) to admit proof of debt -*

G *Application to expunge admission of proof of debt - Locus standi - Whether a bankrupt has locus standi to apply to court to set aside, reverse or vary decision of DGI - Bankruptcy Rules 1969, r. 186*

CIVIL PROCEDURE: *Limitation - Action - Recovery of debt - When*

H *time began to run - Whether on date of acknowledgement of last payment - Whether six year period had expired - Whether s. 26(2) Limitation Act 1953 applicable*

I

The appellant granted two loan facilities, an Islamic loan and conventional loan, to the borrower. Upon default in the repayment of the loans, the appellant filed recovery action against the guarantor ('the respondent') and obtained summary judgment for

the sum of RM709,999.59. As the respondent failed to pay the judgment sum, the appellant issued a bankruptcy notice to the respondent. Subsequently, the appellant obtained the adjudication order and receiving order (AO/RO) against the respondent. *Vide* encl.12A, the respondent filed a summons in chambers in the High Court to rescind the AO/RO on the ground that the loans had been fully settled. The appellant filed its proof of debt for RM1,075,665.72 being the sum of RM141,606.98 owing under the Islamic loan and RM934,058.74 owing under the conventional loan. When the respondent's application in encl. 12A was dismissed, the respondent appealed against the registrar's decision. The judge ordered the Director General of Insolvency ('DGI') to confirm the total sum owing by the estate of the respondent. The DGI rejected the sum of RM323,479.55 from the appellant's proof of debt and only admitted the sum of RM141,606.98 under the Islamic loan and the sum of RM610,579.19 under the conventional loan thereby totalling RM752,186.17. The respondent then withdrew his appeal. However, on 20 December 2012, *vide* encl. 22A, the respondent applied again to the High Court for an order to annul and rescind the AO/RO made and to expunge the admission of the proof of debt under the conventional loan by the DGI. The respondent's application was dismissed by the registrar. On appeal to the judge in chambers, the respondent's appeal was allowed and the order of the registrar was reversed. Dissatisfied, the appellant appealed, and submitted that (i) the application of the respondent to annul and rescind the AO/RO was prevented by the principle of *res judicata* in view of a previous summons in chambers by the respondent to rescind the AO/RO; (ii) the respondent had no *locus standi* to apply to reverse the decision of the DGI to admit the proof of debt under the conventional loan; (iii) the recovery of the debt under the conventional loan was not time barred; and (iv) that the requirements under s. 105(1) of the Bankruptcy Act 1967 ('the Act') had not been fulfilled by the respondent.

Held (allowing appeal)
Per Mah Weng Kwai JCA delivering the judgment of the court:

(1) Upon an AO/RO being granted by the bankruptcy court, the affairs of the estate of the bankrupt are placed in the hands of the DGI and the decisions of the DGI bind the bankrupt.

All matters concerning the admission of proof of debt filed by creditors are matters to be dealt with and decided by the DGI. Rejection of a proof of debt by the DGI is governed by r. 186 of the Bankruptcy Rules 1969 which provides for the rejection of a proof of debt by the DGI but not one of admission of a proof of debt. Only the DGI can decide which debt is to be admitted and a bankrupt had no *locus standi* to apply to court to set aside, reverse or vary the decision of the DGI. A bankrupt is not entitled to apply to expunge an admission of proof of debt by the DGI except in a case involving a scheme or a composition or where there is fraud, which was not the case here. (para 20)

(2) The respondent had previously filed encl. 12A to rescind the AO/RO on the ground that the loan had been fully settled and as the respondent had decided to withdraw his appeal, the respondent by his conduct should be estopped, pursuant to the principle of *res judicata*, from relitigating the issues of annulment and rescission of the AO/RO and the expungement of the proof of debt admitted by the DGI under the conventional loan. It is trite that the respondent cannot litigate by instalments. (para 21)

(3) In light of the date of acknowledgement of the last payment, time began to run from 29 June 2006 and not from 6 October 1995, the date of the loan agreements as contended by the respondent. The six year period from 29 June 2006 had not expired when the appellant filed the bankruptcy notice and creditor's petition and when the AO/RO were granted by the court on 20 December 2011. The six year period had also not expired when the appellant filed its proof of debt on 19 January 2012. Significantly, it must be noted that the respondent did not raise the issue of limitation before the AO/RO were granted by the bankruptcy court. The judge erred in law in holding that s. 6 of the Limitation Act 1953 applied, and not s. 26(2), in this case. (para 22)

(4) The respondent had only settled the balance of the Islamic loan in the sum of RM141,606.98 but not the sum outstanding under the conventional loan. The respondent had failed to show that the conventional loan had been repaid in full to justify the annulment of the AO/RO. As the requirement under s. 105(1) of the Act had not been complied with by

the respondent, there was no reason for the judge to allow the respondent's application to annul and rescind the AO/RO. (para 23)

Bahasa Malaysia *Translation Of Headnotes*

Perayu memberikan dua kemudahan pinjaman, satu pinjaman Islam dan satu pinjaman konvensional, kepada peminjam. Atas keingkaran pembayaran balik pinjaman, perayu memfailkan tindakan mendapatkan balik pinjaman terhadap penjamin ('responden') dan memperoleh penghakiman terus bagi jumlah RM709,999.59. Oleh kerana responden gagal membayar jumlah penghakiman, perayu telah mengeluarkan notis kebankrapan terhadap responden. Kemudian, perayu telah memperoleh perintah penerimaan dan penghakiman (AO/RO) terhadap responden. Melalui lampiran 12A, responden memfailkan saman dalam kamar di Mahkamah Tinggi untuk membatalkan AO/RO atas alasan bahawa pinjaman telah dibayar sepenuhnya. Perayu memfailkan bukti hutang untuk RM1,075,665.72 iaitu jumlah hutang RM141,606.97 di bawah pinjaman Islam dan RM934,058.74 di bawah pinjaman konvensional. Apabila permohonan responden dalam lampiran 12A telah ditolak, responden merayu terhadap keputusan pendaftar. Hakim telah memerintahkan supaya Ketua Pengarah Insolvensi ('DGI') mengesahkan jumlah wang yang terhutang oleh estet responden. DGI telah menolak jumlah RM323,379.55 dari bukti hutang perayu dan hanya mengakui jumlah RM141,606.98 bawah pinjaman Islam dan jumlah RM610,579.19 bawah pinjaman konvensional, dengan itu membawa kepada amaun RM752,186.17. Responden telah menarik balik rayuannya. Walau bagaimanapun, pada 20 Disember 2012, melalui lampiran 22A, responden memohon kepada Mahkamah Tinggi untuk perintah membatalkan dan memansuhkan AO/RO yang dibuat dan memadamkan kemasukan bukti hutang bawah pinjaman konvensional oleh DGI. Permohonan responden telah ditolak oleh pendaftar. Atas rayuan kepada hakim dalam kamar, rayuan responden dibenarkan dan perintah pendaftar telah diakas. Tidak berpuas hati, perayu merayu dan menghujahkan (i) permohonan responden untuk membatalkan dan memansuhkan AO/RO telah dihalang oleh prinsip *res judicata* memandangkan responden telah, sebelum ini, membawa saman dalam kamar untuk membatalkan AO/RO; (ii) responden tidak mempunyai *locus standi* untuk memohon supaya keputusan DGI

mengakui bukti hutang bawah pinjaman konvensional diakas; (iii) tindakan mendapatkan balik hutang bawah pinjaman konvensional tidak dihadkan oleh masa; dan (iv) keperluan bawah s. 105(1) Akta Kebankrapan 1967 ('Akta') tidak dipenuhi oleh responden.

Diputuskan (membenarkan rayuan)
Oleh Mah Weng Kwai HMR menyampaikan penghakiman mahkamah:

(1) Apabila AO/RO dibenarkan oleh mahkamah kebankrapan, hal ehwal estet si bankrap terletak dalam tangan DGI dan keputusan yang dibuat oleh DGI akan mengikat si bankrap. Segala perkara yang berkaitan dengan bukti hutang yang difailkan oleh pemiutang adalah diuruskan dan diputuskan oleh DGI. Penolakan bukti hutang oleh DGI adalah ditadbir oleh k. 186 Kaedah-Kaedah Kebankrapan 1969 yang memperuntukkan penolakan bukti hutang oleh DGI tetapi bukan pengakuan bukti hutang. Hanya DGI sahaja boleh memutuskan hutang mana yang boleh diakui dan si bankrap tidak mempunyai *locus standi* untuk memohon supaya mahkamah mengenepikan, mengakas atau mengubah keputusan DGI. Si bankrap tidak mempunyai hak untuk memohon supaya memadamkan bukti hutang oleh DGI kecuali dalam kes yang melibatkan skim atau komposisi atau di mana berlakunya penipuan, dan ini tidak berlaku di sini.

(2) Responden telah sebelum ini memfailkan lampiran 12A untuk membatalkan AO/RO atas alasan bahawa pinjaman telah diselesaikan sepenuhnya dan dengan keputusan responden untuk menarik balik rayuannya, responden melalui tindakannya harus diestop, selaras dengan prinsip *res judicata*, dari melitigasi semula isu-isu pembatalan dan pemansuhan AO/RO dan pemadaman bukti hutang oleh DGI bawah pinjaman konvensional. Adalah undang-undang mantap bahawa responden tidak boleh melitigasi secara ansuran.

(3) Berdasarkan tarikh surat akuan terima bayaran terakhir, masa mula berjalan dari 29 Jun 2006 dan bukan dari 6 Oktober 1995, tarikh perjanjian pinjaman seperti yang dihujahkan oleh responden. Tempoh enam tahun dari 29 Jun 2006 tidak luput apabila perayu memfailkan notis kebankrapan dan petisyen pemiutang dan apabila AO/RO dibenarkan oleh mahkamah

pada 20 Disember 2011. Tempoh enam tahun tidak luput apabila perayu memfailkan bukti hutang pada 19 Januari 2012. Nyata sekali, ia harus dinyatakan bahawa responden tidak membangkitkan isu had masa sebelum AO/RO dibenarkan oleh mahkamah kebankrapan. Hakim terkhilaf dari segi undang-undang apabila memutuskan bahawa s. 6 Akta Had Masa 1953 terpakai, dan bukan s. 26(2), dalam kes ini.

(4) Responden hanya menyelesaikan baki pinjaman Islam dalam jumlah RM141,606.98 tetapi bukan jumlah hutang yang tertunggak bawah pinjaman konvensional. Responden gagal menunjukkan bahawa pinjaman konvensional telah dibayar secara penuh untuk menjustifikasikan pembatalan AO/RO. Oleh kerana keperluan bawah s.105(1) Akta tidak dipatuhi oleh responden, tiada alasan untuk hakim membenarkan permohonan responden untuk membatalkan dan memansuhkan AO/RO.

Case(s) referred to:

Asia Commercial Finance (M) Berhad v. Kawal Teliti Sdn Bhd [1995] 3 CLJ 783 SC ***(refd)***

Ng Hee Thoong & Anor v. Public Bank Berhad [1995] 1 CLJ 609 CA ***(refd)***

Re Benoist [1909] 2 KB 784 ***(refd)***

Re John Blade [1907] 24 WN (NSW) 189 ***(refd)***

Superintendent of Pudu Prison & Ors v. Sim Kie Cho [1986] 1 CLJ 548; [1986] CLJ (Rep) 256 SC ***(refd)***

Tan Seok Leng v. Magasu Sundram T Magasu & Anor [2013] 1 LNS 28 HC ***(dist)***

Legislation referred to:

Bankruptcy Act 1967, ss. 42, 86, 105(1)
Bankruptcy Rules 1969, r. 186
Limitation Act 1953, ss. 6, 26(2)

Other source(s) referred to:

Williams & Muir Hunter, *The Law & Practice in Bankruptcy*, 19th edn, para 26, p 538

For the appellants - Lua Ai Siew; M/s Soo Thein Ming & Nashrah
For the respondent - Muhammad Syahri Adnan (Abdul Aziz Hassan with him); M/s Rafaei & Co

[Appeal from High Court, Kuala Terengganu; Bankruptcy No: 29-315-2011]

Reported by Suhainah Wahiduddin

A

JUDGMENT

Mah Weng Kwai JCA:

Brief Facts/Chronology Of Events

B **[1]** On 6 November 1995 the appellant granted two loan facilities to the borrower Rangkaian Beringin Sdn Bhd namely, an Islamic loan and a conventional loan. The respondent was the guarantor.

C **[2]** Upon default in the repayment of the loans, the appellant filed recovery action against the respondent and on 15 June 1999 obtained summary judgment for the sum of RM709,999.59 together with interest and costs.

D **[3]** The respondent did not appeal against the order of 15 June 1999.

[4] As the respondent failed to pay the judgment sum, the appellant on 31 May 2011 issued a bankruptcy notice to the respondent. Upon the respondent committing an act of
E bankruptcy, the respondent proceeded to file the creditor's petition.

[5] On 20 December 2011, the appellant obtained the adjudication order and receiving order ('AO/RO') against the
F respondent.

[6] On 9 January 2012 *vide* encl. 12A, the respondent filed a summons in chambers in the High Court to rescind the AO/RO on the ground that the loans had been fully settled.

G **[7]** Ten days later on 19 January 2012 the appellant filed its proof of debt for RM1,075,665.72, being the sum of RM141,606.98 owing under the Islamic loan and the sum of RM934,058.74 owing under the conventional loan.

H **[8]** The respondent's application in encl. 12A was dismissed by the learned Registrar on 26 January 2012.

[9] On 2 February 2012 the respondent appealed to the learned judge in chambers against the learned Registrar's decision.

I **[10]** On 6 March 2012 the learned judge ordered the Director General of Insolvency to confirm the total sum owing by the estate of the respondent.

[11] On 8 March 2012 the Director General of Insolvency rejected the sum of RM323,479.55 from the appellant's proof of debt and only admitted the sum of RM141,606.98 under the Islamic loan and the sum of RM610,579.19 under the conventional loan thereby totalling RM752,186.17.

[12] On 10 March 2012 upon the Director General of Insolvency's confirmation of the sum owing by the estate of the respondent, the respondent withdrew his appeal to the learned judge in chambers.

[13] However, on 20 December 2012 *vide* encl. 22A, the respondent applied again to the High Court for an order to annul and rescind the AO/RO made exactly a year earlier on 20 December 2011 and to expunge the admission of the proof of debt under the conventional loan by the Director General of Insolvency made on 8 March 2012.

[14] On 26 June 2013 the respondent's application was dismissed by the learned Registrar. On appeal to the learned judge in chambers, the appeal was allowed and the order of the learned Registrar was reversed.

[15] Being dissatisfied with the decision of the learned judge the appellant filed its appeal on 2 October 2013.

[16] On 22 January 2014, this court unanimously decided to allow the appeal.

[17] Being dissatisfied with the said order, the respondent has filed his appeal.

The Appeal

[18] At the hearing of the appeal learned counsel for the appellant raised the following grounds in support of her argument namely:

(i) that the respondent had no *locus standi* to apply to reverse the decision of the Director General of Insolvency made on 8 March 2012 to admit the proof of debt under the conventional loan in the sum of RM610,579.19;

(ii) that the application of the respondent to annul and rescind the AO/RO is prevented by the principle of *res judicata* in view of a previous summons in chambers filed on 9 January 2012 by the respondent to rescind the AO/RO;

(iii) that the recovery of the debt under the conventional loan is not time barred; and

(iv) that the requirements under s. 105(1) of the Bankruptcy Act 1967 ('the Act') have not been fulfilled by the respondent.

Grounds Of Decision

[19] We will now consider each of the grounds of appeal in turn.

[20] Issue 1 : The *Locus* Point

(i) It is trite that upon an AO/RO being granted by the Bankruptcy Court the affairs of the estate of the bankrupt are placed in the hands of the Director General of Insolvency and that the decisions of the Director General of Insolvency bind the bankrupt.

(ii) The respondent was declared a bankrupt on 20 December 2011 and up to 8 March 2012 when the appellant's proof of debt under the conventional loan was admitted by the Director General of Insolvency, the respondent had not been discharged as a bankrupt.

(iii) Hence, all matters concerning the admission of proof of debt filed by creditors are matters to be dealt with and decided by the Director General of Insolvency. Yet on 20 December 2012, the respondent sought an order of court to expunge or reject the admission of the proof of debt made by the Director General of Insolvency on 8 March 2012.

(iv) Rejection of a proof of debt by the Director General of Insolvency is governed by r. 186 of the Bankruptcy Rules 1969 which provides as follows:

> Subject to the power of the Court to extend the time no application to reverse or vary the decision of the Official Assignee in rejecting a proof shall be entertained after the expiration of twenty-one days from the date of the decision complained of.

(v) It is interesting to note that r. 186 only provides for the rejection of a proof of debt by the Director General of Insolvency but not one of admission of a proof of debt. Only the Director General of Insolvency can decide which debt is to be admitted and a bankrupt has no *locus* to apply to court to set aside, reverse or vary the decision of the Director General of Insolvency.

(vi) Even in the case of a rejection of a proof of debt it is only the creditor concerned who will have the *locus* to appeal to the court against the decision of the Director General of Insolvency.

(vii) While it is not disputed that a bankrupt is entitled to appeal against the decision of the Director General of Insolvency under s. 86 of the Act, which provides that "if the bankrupt or any other person is aggrieved by any act or decision of the Director General of Insolvency, he may apply to the court, and the court may confirm, reverse or modify the act or decision complained of and make such order in the premises as it thinks just", a bankrupt is however not entitled to apply to expunge an admission of proof of debt by the Director General of Insolvency except in a case involving a scheme or a composition or where there is fraud. (see *Bankruptcy Law in Malaysia and Singapore, A Sourcebook of Principles, Practice Procedure, Cases and Materials, Millennium Edition* by GK Ganesan and *The Law & Practice in Bankruptcy* 19th Edition by Williams & Muir Hunter, at para. 26, p. 538).

(viii) In the present case at the material time when the Director General of Insolvency admitted the proof of debt there was no evidence of any scheme or composition being contemplated or in place as confirmed by learned counsel for the Director General of Insolvency at the hearing of this appeal. It is only in the case of a composition or scheme that a debtor can make an application to the court to expunge or reduce a proof filed by a creditor. This is clear from the cases of *Re Benoist* [1909] 2 KB 784 and *Re John Blade* [1907] 24 WN (NSW) 189. And significantly there was no allegation whatsoever of any element of fraud being perpetrated on or by the Director General of Insolvency when the proof of debt was admitted.

(ix) We are of the view that it was erroneous on the part of learned counsel for the respondent to invoke the provisions of s. 86 of the Act in the application in encl. 22A, as the applicable section is s. 42 of the Act which deals with the rules as to proof of debts. Section 42 is to be read with Schedule C with respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs and other matters.

(x) Thus, we are of the view that the learned judge erred in law by not holding that the respondent did not have the *locus* to move the court to expunge the admission of the proof of debt by the Director General of Insolvency.

[21] Issue 2 : The *Res Judicata* Point

(i) On 20 December 2012, the respondent applied for an order to annul and rescind the AO/RO.

(ii) The respondent had previously by way of a summons in chambers (encl. 12A) applied to the High Court to rescind the same.

(iii) The summons in chambers (encl. 12A) was filed on 9 January 2012 and upon hearing it was dismissed by the learned Registrar on 26 January 2012. Being dissatisfied, the respondent appealed to the judge in chambers but on 10 May 12, the respondent withdrew the appeal upon the Director General of Insolvency confirming the total amount of debt outstanding in the account of the estate of the respondent. By doing so the respondent had expressly and/or impliedly accepted the fact that only the sum of RM141,606.98 under the Islamic loan had been settled but not the sum of RM610,579.19 under the conventional loan, which was still owing to the appellant.

(iv) We are of the view that as the respondent had previously filed the summons in chambers (encl. 12A) to rescind the AO/RO on the ground that the loan had been fully settled and as the respondent had decided to withdraw his appeal, the respondent by his conduct should be estopped, pursuant to the principle of *res judicata*, from re-litigating the issues of annulment and rescission of the AO/RO and the expungement of the proof of debt admitted by the Director General of Insolvency under the conventional loan. (See *Superintendent of*

Pudu Prison & Ors v. Sim Kie Cho [1986] 1 CLJ 548; [1986] CLJ (Rep) 256 (Supreme Court) and *Asia Commercial Finance (M) Berhad v. Kawal Teliti Sdn Bhd* [1995] 3 CLJ 783 (Supreme Court per Peh Swee Chin SCJ)).

(v) The respondent had the opportunity to fully ventilate his case before the learned judge in chambers in the hearing of his appeal against the decision of the learned Registrar in encl. 12A but had instead chosen to withdraw his appeal. The same cause of action may not be re-litigated between the same parties as it is *res judicata*. It is trite that the respondent cannot litigate by instalments.

(vi) We are of the view that the learned judge erred in law when he failed to hold that the application in encl. 22A was *res judicata*.

[22] Issue 3 : The Limitation Point

(i) The respondent's case on this issue was that the appellant's cause of action in respect of the debt owing under the conventional loan arose on 6 November 1995, the date of the loan agreements, and that the appellant's claim is therefore time barred under s. 6 of the Limitation Act 1953.

(ii) According to the appellant the borrower had as at 20 December 2011, repaid the sum of RM349,793.99 in respect of the conventional loan, with the last payment of RM16,640.61 having been made to the appellant on 29 June 2006. A certificate of indebtedness stating the outstanding amount as at 20 December 2011 was exhibited in the affidavit in support of the appellant. The respondent as the guarantor (and director of the borrower company) was no less bound by the certificate of indebtedness, which was not in any event challenged by the respondent. The date of the last repayment was confirmed by Lee Weng Swee, manager of the appellant's Remedial Management Department in para. 6 of his affidavit affirmed on 4 April 2013. The respondent did not file any affidavit in reply to rebut the averment of the appellant. (see *Ng Hee Thoong & Anor v. Public Bank Berhad* [1995] 1 CLJ 609; [1995] 1 MLJ 281).

(iii) As the borrower had made the last payment on 29 June 2006 and as the appellant had commenced bankruptcy proceedings on 31 May 2011, the appellant's action is not time barred by s. 26(2) of the Limitation Act 1953, which provides that:

> Where any right of action has accrued to recover any debt or other liquidated pecuniary claim, or any claim to the personal estate of a deceased person or to any share or interest therein, and the person liable or accountable therefore acknowledges the claim or makes any payment in respect thereof, the right shall be deemed to have accrued on and not before the date of the acknowledgment or the last payment.

(iv) In light of the date of acknowledgement of the last payment, time began to run from 29 June 2006 and not from 6 October 1995, the date of the loan agreements as contended by the respondent. The six-year period from 29 June 2006 had not expired when the appellant filed the bankruptcy notice and creditor's petition and when the AO/RO were granted by the court on 20 December 2011. The six-year period had also not expired when the appellant filed its proof of debt on 19 January 2012. Significantly, it must be noted that the respondent did not raise the issue of limitation before the AO/RO were granted by the bankruptcy court.

(v) This case can clearly be distinguished from the case of *Tan Seok Leng v. Magasu Sundram T Magasu & Anor* [2013] 1 LNS 28; [2013] MLJU 132 cited by learned counsel for the respondent where the learned judge had held in the action for specific performance, that a delay of nearly nine years was too long and inequitable for the court to lend its assistance to such a proceeding.

(vi) Accordingly, we are of the view that the learned judge erred in law in holding that s. 6 of the Limitation Act 1953 applied, and not s. 26(2), in this case.

[23] Issue 4 : The Section 105(1) of the Bankruptcy Act Point

(i) The court may annul the AO/RO where it is proved to the satisfaction of the court that the debts of the bankrupt have been paid in full.

Section 105(1) of the Act provides as follows:

> Where in the opinion of the court a debtor ought not to have been adjudged bankrupt, or where it is proved to the satisfaction of the court that the debts of the bankrupt are paid in full, or where it appears to the court that proceedings are pending in the Republic of Singapore for the distribution of the bankrupt's estate and effects among his creditors under the bankruptcy or insolvency laws of the Republic of Singapore and that the distribution ought to take place in that country, the court may annul the adjudication.

(ii) In the present case what has been proved in evidence by the appellant is that the respondent had only settled the balance of the Islamic loan in the sum of RM141,606.98 but not the sum outstanding under the conventional loan. The respondent had failed to show that the conventional loan had been repaid in full to justify the annulment of the AO/RO.

(iii) As the requirement under s. 105(1) of the Act has not been complied with by the respondent, we see no reason for the learned judge to allow the respondent's application to annul and rescind the AO/RO.

Conclusion

[24] In the result, the appeal was allowed with no order as to costs. The deposit to be refunded to the appellant.